

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2899

Introduced by Committee on Labor and Employment (Assembly Members Roger Hernández (Chair), Chu, Low, McCarty, and Thurmond)

March 1, 2016

An act to amend Section 1197.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2899, as amended, Committee on Labor and Employment. Minimum wage violations: ~~appeal~~ *challenges*.

Under existing law, any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by applicable state or local law or an order of the Industrial Welfare Commission, is subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable specified penalties, as provided. Existing law provides notice and hearing requirements under which a person against whom a citation has been issued, can request a hearing to contest proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties. Existing law further provides that after a hearing with the Labor Commissioner, a person contesting a citation may file a writ of mandate, within 45 days, with the appropriate superior court.

This bill would ~~recharacterize the request for a hearing to contest the citation as a request for appeal and require a person appealing a citation seeking a writ of mandate contesting the Labor Commissioner's ruling,~~

to post a ~~bond~~, *bond with the Labor Commissioner* as specified, in an amount equal to the unpaid wages assessed under the citation, excluding penalties. The bill would require that the bond be issued in favor of the unpaid employees, and ensure that the ~~appellant~~ *person seeking the writ* makes prescribed payments pursuant to the proceedings.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1197.1 of the Labor Code is amended to
2 read:

3 1197.1. (a) Any employer or other person acting either
4 individually or as an officer, agent, or employee of another person,
5 who pays or causes to be paid to any employee a wage less than
6 the minimum fixed by an applicable state or local law, or by an
7 order of the commission shall be subject to a civil penalty,
8 restitution of wages, liquidated damages payable to the employee,
9 and any applicable penalties imposed pursuant to Section 203 as
10 follows:

11 (1) For any initial violation that is intentionally committed, one
12 hundred dollars (\$100) for each underpaid employee for each pay
13 period for which the employee is underpaid. This amount shall be
14 in addition to an amount sufficient to recover underpaid wages,
15 liquidated damages pursuant to Section 1194.2, and any applicable
16 penalties imposed pursuant to Section 203.

17 (2) For each subsequent violation for the same specific offense,
18 two hundred fifty dollars (\$250) for each underpaid employee for
19 each pay period for which the employee is underpaid regardless
20 of whether the initial violation is intentionally committed. This
21 amount shall be in addition to an amount sufficient to recover
22 underpaid wages, liquidated damages pursuant to Section 1194.2,
23 and any applicable penalties imposed pursuant to Section 203.

24 (3) Wages, liquidated damages, and any applicable penalties
25 imposed pursuant to Section 203, recovered pursuant to this section
26 shall be paid to the affected employee.

27 (b) If, upon inspection or investigation, the Labor Commissioner
28 determines that a person has paid or caused to be paid a wage less
29 than the minimum under applicable law, the Labor Commissioner
30 may issue a citation to the person in violation. The citation may

1 be served personally or by registered mail in accordance with
2 subdivision (c) of Section 11505 of the Government Code. Each
3 citation shall be in writing and shall describe the nature of the
4 violation, including reference to the statutory provision alleged to
5 have been violated. The Labor Commissioner promptly shall take
6 all appropriate action, in accordance with this section, to enforce
7 the citation and to recover the civil penalty assessed, wages,
8 liquidated damages, and any applicable penalties imposed pursuant
9 to Section 203 in connection with the citation.

10 (c) (1) If a person desires to contest a citation or the proposed
11 assessment of a civil penalty, wages, liquidated damages, and any
12 applicable penalties imposed pursuant to Section 203 therefor, the
13 person shall, within 15 business days after service of the citation,
14 notify the office of the Labor Commissioner that appears on the
15 citation of his or her appeal by a request for an informal hearing.
16 The Labor Commissioner or his or her deputy or agent shall, within
17 30 days, hold a hearing at the conclusion of which the citation or
18 proposed assessment of a civil penalty, wages, liquidated damages,
19 and any applicable penalties imposed pursuant to Section 203 shall
20 be affirmed, modified, or dismissed.

21 ~~(2) As a condition to an appeal, the person appealing shall first~~
22 ~~post a bond with the Labor Commissioner equal to the total amount~~
23 ~~of any minimum wages, liquidated damages, and overtime~~
24 ~~compensation that are due and owing as determined pursuant to~~
25 ~~subdivision (b) of Section 558, as specified in the citation being~~
26 ~~appealed. The bond amount shall not include amounts for penalties.~~
27 ~~The bond shall be issued by a surety duly authorized to do business~~
28 ~~in this state, shall be issued in favor of unpaid employees, and shall~~
29 ~~ensure that the appellant makes payments as set forth in this~~
30 ~~paragraph. If a decision is entered which affirms or modifies the~~
31 ~~amounts for minimum wages, liquidated damages, or overtime~~
32 ~~compensation, the appellant shall pay the amounts owed for the~~
33 ~~specified items included in a clerk's judgment entered under~~
34 ~~subdivision (f) based on the decision, or pursuant to a court~~
35 ~~judgment in a writ of mandate proceeding under paragraph (3). If~~
36 ~~the appeal is withdrawn or dismissed without entry of judgment,~~
37 ~~the appellant shall pay the amounts owed for the specified items~~
38 ~~pursuant to the citation, or the administrative decision if a pending~~
39 ~~writ of mandate is dismissed prior to a court decision, unless the~~
40 ~~parties have executed a settlement agreement for payment of some~~

1 other amount. In the case of a settlement agreement, the appellant
2 shall pay the amount he or she is obligated to pay under the terms
3 of the settlement.

4 (3)

5 (2) The decision of the Labor Commissioner shall consist of a
6 notice of findings, findings, and an order, all of which shall be
7 served on all parties to the hearing within 15 days after the hearing
8 by regular first-class mail at the last known address of the party
9 on file with the Labor Commissioner. Service shall be completed
10 pursuant to Section 1013 of the Code of Civil Procedure. Any
11 amount found due by the Labor Commissioner as a result of a
12 hearing shall become due and payable 45 days after notice of the
13 findings and written findings and order have been mailed to the
14 party assessed. A writ of mandate may be taken from this finding
15 to the appropriate superior court. The party shall pay any judgment
16 and costs ultimately rendered by the court against the party for the
17 assessment. The writ shall be taken within 45 days of service of
18 the notice of findings, findings, and order thereon.

19 (3) *As a condition to filing a petition for a writ of mandate, the*
20 *petitioner seeking the writ shall first post a bond with the Labor*
21 *Commissioner equal to the total amount of any minimum wages,*
22 *liquidated damages, and overtime compensation that are due and*
23 *owing as determined pursuant to subdivision (b) of Section 558,*
24 *as specified in the citation being challenged. The bond amount*
25 *shall not include amounts for penalties. The bond shall be issued*
26 *by a surety duly authorized to do business in this state, shall be*
27 *issued in favor of unpaid employees, and shall ensure that the*
28 *petitioner makes payments as set forth in this paragraph. If a*
29 *decision is entered which affirms or modifies the amounts for*
30 *minimum wages, liquidated damages, or overtime compensation,*
31 *the petitioner shall pay the amounts owed for the specified items*
32 *included in a clerk's judgment entered under subdivision (f) based*
33 *on the decision, or pursuant to a court judgment in a writ of*
34 *mandate proceeding under paragraph (2). If the request for a writ*
35 *is withdrawn or dismissed without entry of judgment, the petitioner*
36 *shall pay the amounts owed for the specified items pursuant to the*
37 *citation, or the administrative decision if a pending writ of mandate*
38 *is dismissed prior to a court decision, unless the parties have*
39 *executed a settlement agreement for payment of some other amount.*
40 *In the case of a settlement agreement, the petitioner shall pay the*

1 *amount he or she is obligated to pay under the terms of the*
2 *settlement.*

3 (d) A person to whom a citation has been issued shall, in lieu
4 of contesting a citation pursuant to this section, transmit to the
5 office of the Labor Commissioner designated on the citation the
6 amount specified for the violation within 15 business days after
7 issuance of the citation.

8 (e) When no petition objecting to a citation or the proposed
9 assessment of a civil penalty, wages, liquidated damages, and any
10 applicable penalties imposed pursuant to Section 203 is filed, a
11 certified copy of the citation or proposed civil penalty, wages,
12 liquidated damages, and any applicable penalties imposed pursuant
13 to Section 203 may be filed by the Labor Commissioner in the
14 office of the clerk of the superior court in any county in which the
15 person assessed has or had a place of business. The clerk,
16 immediately upon the filing, shall enter judgment for the state
17 against the person assessed in the amount shown on the citation
18 or proposed assessment of a civil penalty, wages, liquidated
19 damages, and any applicable penalties imposed pursuant to Section
20 203.

21 (f) When findings and the order thereon are made affirming or
22 modifying a citation or proposed assessment of a civil penalty,
23 wages, liquidated damages, and any applicable penalties imposed
24 pursuant to Section 203 after hearing, a certified copy of these
25 findings and the order entered thereon may be entered by the Labor
26 Commissioner in the office of the clerk of the superior court in
27 any county in which the person assessed has property or in which
28 the person assessed has or had a place of business. The clerk,
29 immediately upon the filing, shall enter judgment for the state
30 against the person assessed in the amount shown on the certified
31 order.

32 (g) A judgment entered pursuant to this section shall bear the
33 same rate of interest and shall have the same effect as other
34 judgments and be given the same preference allowed by the law
35 on other judgments rendered for claims for taxes. The clerk shall
36 make no charge for the service provided by this section to be
37 performed by him or her.

38 (h) In a jurisdiction where a local entity has the legal authority
39 to issue a citation against an employer for a violation of any
40 applicable local minimum wage law, the Labor Commissioner,

- 1 pursuant to a request from the local entity, may issue a citation
2 against an employer for a violation of any applicable local
3 minimum wage law if the local entity has not cited the employer
4 for the same violation. If the Labor Commissioner issues a citation,
5 the local entity shall not cite the employer for the same violation.
6 (i) The civil penalties provided for in this section are in addition
7 to any other penalty provided by law.
8 (j) This section shall not apply to any order of the commission
9 relating to household occupations.
10 (k) This section does not change the applicability of local
11 minimum wage laws to any entity.